

1 TOURISM, ARTS AND HERITAGE CABINET

2 Department of Fish and Wildlife Resources

3 (Amended After Comments)

4 301 KAR 1:130. Live bait for personal use.

5 RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.450, 150.990

6 STATUTORY AUTHORITY: KRS 150.025(1)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 105.025(1) authorizes the department

8 to promulgate administrative regulations to establish seasons for the taking of fish and wildlife,

9 to regulate creel limits and methods of take, and to make these requirements apply to a limited

10 area~~[to regulate creel and possession limits of fish, including the size or types of devices used for~~

11 ~~taking fish and the places where the taking of fish is permitted]~~. This administrative regulation

12 establishes the procedures for the taking of live bait for personal use.

13 Section 1. Definitions. (1) **"Different body of water" means a body of water that is separate**

14 **and not contiguous to another body of water, including a man-made reservoir that is sepa-**

15 **rated from a downstream river by a dam, but does not include a river, stream, or creek**

16 **that is separated by a low-level dam.**

17 **(2)** "Live bait" means live bait fishes~~[minnows, shad, herring]~~, crayfish, salamanders, frogs ex-

18 cept bullfrogs, tadpoles, native lampreys, Asiatic clams (Genus Corbicula), and other aquatic in-

19 vertebrate organisms except mussels.

20 **(3)[(2)]** "Live bait fishes" means:

21 (a) Rough fishes, except blackside dace, palezone shiner, relict darter, Cumberland darter, and

1 tuxedo darter; or

2 (b) Redear sunfish less than six (6) inches in length~~["Minnows" means fishes under six (6) inch-~~

3 ~~es in length, except blackside dace, palezone shiner, relict darter, duskytail darter, largemouth~~

4 ~~bass, smallmouth bass, Kentucky bass, redear sunfish, rock bass, trout, crappie, walleye, sauger,~~

5 ~~piques, white bass, yellow bass, striped bass, and muskellunge, or any hybrids of the above].~~

6 (4)[(3)] "Sport fisherman" means a person holding a valid resident or nonresident fishing license

7 and includes a person who is license exempt pursuant to KRS 150.170~~[is defined in 301-KAR~~

8 ~~1:410(6)].~~

9 Section 2. Equipment. (1) Any other organisms not defined as live bait pursuant to Section 1 of

10 this administrative regulation shall be returned immediately to the water.

11 (2) Live bait for personal use shall only be taken with the following gear:

12 (a) The maximum size seine for:

13 1. Take in the Ohio and Mississippi Rivers and Barkley and Kentucky Lakes shall be:

14 a. Thirty (30) feet long;

15 b. Six (6) feet deep; and

16 c. With bar mesh no larger than one-fourth (1/4) of an inch;

17 2. All other waters of the Commonwealth shall be:

18 a. Ten (10) feet long;

19 b. Four (4) feet deep; and

20 c. With bar mesh no larger than one-fourth (1/4) of an inch.

21 (b) The maximum size for a minnow trap shall be:

22 1. Three (3) feet long;

23 2. Eighteen (18) inches in diameter; and

- 1 3. With openings no larger than one (1) inch.
- 2 (c) The maximum size for a dip net shall be three (3) feet in diameter, and shall only be allowed
3 in the following waters:
- 4 1. Ohio River;
5 2. Tennessee River;
6 3. Mississippi River;
7 4. Cumberland River below Barkley Dam;
8 5. Kentucky River below Lock Number Fourteen (14); and
9 6. All lakes over 1,000 acres.
- 10 (d) The maximum size for a sport cast net on a statewide basis shall be twenty (20) feet in diame-
11 ter with one (1) inch bar mesh, except take is prohibited in the following bodies of water:
- 12 1. Lakes with a surface area of less than 500 acres; and
13 2. Hatchery Creek in Russell County, a tributary to the Cumberland River located below Wolf
14 Creek Dam~~[Live bait shall be taken with the following gear for personal use. Other species ex-~~
15 ~~cept live bait taken with this gear shall be returned immediately to the water:~~
- 16 ~~(1) Seine:~~
- 17 ~~(a) Maximum size shall be ten (10) feet long, four (4) feet deep, one-fourth (1/4) inch bar mesh,~~
18 ~~with taking permitted statewide; and~~
- 19 ~~(b) Maximum size shall be thirty (30) feet long, six (6) feet deep, one-fourth (1/4) inch bar mesh,~~
20 ~~with taking permitted in Ohio and Mississippi Rivers and Kentucky and Barkley lakes.~~
- 21 ~~(2) Minnow trap: Maximum size shall be three (3) feet long, eighteen (18) inches in diameter,~~
22 ~~one (1) inch openings for catching, with taking permitted statewide.~~
- 23 ~~(3) Dip net: Maximum size shall be three (3) feet in diameter, with taking permitted in Ohio,~~

~~Tennessee, and Mississippi Rivers; Cumberland River below Barkley Dam; Kentucky River below Lock #14; and all lakes over 1,000 acres.~~

~~(4) Sport cast net: The maximum size shall be twenty (20) feet in diameter, one (1) inch bar mesh, with taking permitted statewide except for:~~

~~(a) Streams stocked with trout, which include statewide streams, national forest streams, seasonal catch and release streams, and the Fort Campbell and Fort Knox military reservations that are cited in the List of Streams Stocked with Trout, 2008;~~

~~(b) Lakes with a surface area of less than 500 acres; and~~

~~(c) Crocus and Marrowbone Creeks, Cumberland County.~~

~~1. Crocus Creek shall be closed to cast nets for an area extending from its mouth to fifty (50) yards upstream.~~

~~2. All other tributaries of the Cumberland River below Wolf Creek Dam to the Tennessee state line shall be closed to cast nets].~~

Section 3. Bait. (1) A mussel, except for an Asiatic clam, shall not be taken or used as bait~~[Mussels shall not be taken for use as bait except Asiatic clams].~~

(2) A sport fisherman shall not possess bait in an amount greater than the following~~[fishermen shall fisherman shall not possess bait in amounts greater than those listed in each category below]:~~

(a) 500 live bait fishes~~[minnows];~~

(b) 500 crayfish;

(c) Twenty-five (25) dusky salamanders of the genus *Desmognathus*;

(d) Five (5) frogs, except~~[(other than] bullfrogs[]];~~

(e) Five (5) tadpoles;

(f) 100 native lampreys; or

(g) 500 aquatic invertebrates other than mussels, ~~excluding Asiatic clams~~[(h) 500 shad; and

(i) 500 herring].

Section 4. Possession and Movement of Live Bait for Personal Use. (1) **A person possessing live wild-caught shad or herring shall:**

(a) **Only use live wild-caught shad or herring**~~[be used]~~ **in the water body from which**~~[where]~~ **they were collected; and**

(b) **Not transport live wild-caught shad or herring from the body in which they were collected to:**

1. A different body of water; or

2. The same body of water if it involves transporting the shad or herring via a Kentucky roadway~~[be transported to or used in a different body of water]~~.

(2) **A person may possess or transport live shad or herring if the person legally purchased the shad or herring from a licensed bait dealer and possesses a valid receipt of the purchase that includes the:**

(a) Species of fish;

(b) Quantity of fish;

(c) Amount of the transaction; and

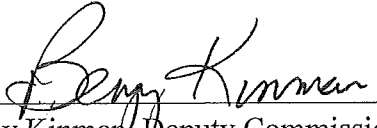
(d) Date of purchase.

(3) **Prohibited aquatic species, as established in 301 KAR 1:122, shall not be possessed or used as live bait**~~[Material Incorporated by Reference. (1) "List of Streams Stocked with Trout, 2008", is incorporated by reference.~~

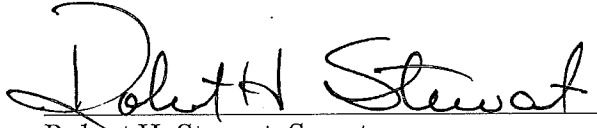
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- 1 the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, be-
- 2 tween the hours of 8 a.m. and 4:30 p.m. Eastern time].

Approved by the Fish and Wildlife Commission June 7, 2013

 12/7/13

Benjy Kinman, Deputy Commissioner
Department of Fish and Wildlife Resources



Robert H. Stewart, Secretary
Tourism, Arts and Heritage Cabinet

12/8/13

Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

301 KAR 1:130. Live bait for personal use.

Contact Person: Rose Mack

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the types of live bait and legal methods that may be used to take live bait for personal use.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by regulating the amount of live bait, size or types of devices used for taking live bait, and the places where the taking of live bait is permitted.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation: This amendment will allow sport fishermen to harvest live bait with a cast net in all water bodies in Kentucky except in lakes less than 500 acres and in Hatchery Creek which is located below Wolf Creek Dam. This amendment will also prohibit a person from moving live wild-caught shad and herring from the water body in which they were collected, even if a person is moving them on a Kentucky highway to be used on the same body of water. The amendment allows a person to possess or transport live shad or herring if the person legally purchases the fish from a licensed bait dealer, if the person possesses a valid receipt of the purchase that includes the species of fish purchased, the quantity of shad and/or herring, the amount of the transaction, and the date of purchase.
- (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow sport fishermen to collect live bait for personal use in all tributaries of the Cumberland River located below Wolf Creek Dam and trout streams with the exception of Hatchery Creek. It is also needed to prevent the accidental introduction of young Asian carp into new water bodies as young Asian carp are difficult to separate from native shad and herring.
- (c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.
- (d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who collect live bait for personal use will be affected by this amendment. At present, there is no estimate of the number of people who collect live bait for personal use in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amend-

ment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers will need to comply with the changes identified in 2(a).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to individuals who collect live bait for personal use to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals will now be able to collect live bait for personal use from more water bodies, but shall only use live wild-caught shad and herring in the water body from which they were collected. A person may also legally possess and transport live shad or herring, provided the fish were purchased from a licensed bait dealer if they possess a valid receipt of the purchase that includes the species of fish purchased, the quantity of fish, the amount of the transaction, and the date of the purchase.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no initial change in cost to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not applied because all individuals who collect live bait for personal use are being treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 301 KAR 1:130
Contact Person: Rose Mack
Phone number: (502) 564-3400

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? No cost will be incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF CONSIDERATION
Relating to 301 KAR 1:130
(Amended After Comments)

I. The public hearing on 301 KAR 1:130, scheduled for September 24, 2013, in the Commission Room at the Kentucky Department of Fish and Wildlife Resources was cancelled; however, a written comment was received during the public comment period.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Captain Jim Durham, Owner	StriperFun Fishing Guide Service

III. The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>
Mark Cramer, Wildlife Program Coordinator
Ron Brooks, Fisheries Division Director

IV. Summary of Comments and Responses

(1) Subject Matter: Catching bait with a cast net.

Commenter: Jim Durham

- (a) Comment: The regulation is unclear whether a person can catch bait in the Cumberland River below Wolf Creek Dam with a cast net.
- (b) Response: The regulation clearly allows a person to use a cast net to catch bait for personal use on a statewide basis, except for lakes with a surface area of less than 500 acres and in Hatchery Creek in Russell County, which is a tributary to the Cumberland River located below Wolf Creek Dam.

(2) Subject Matter: Different bodies of water.

Commenter: Jim Durham

- (a) Comment: There should be better clarification as to what a "different body of water" means. Specifically, is Lake Cumberland a different body of water than the Cumberland River?

- (b) Response: The Department agrees. The Department has amended the regulation to include a definition of "Different body of water".

(3) Subject Matter: Lake Cumberland and the Cumberland River

Commenter: Jim Durham

- (a) Comment: Why is it an issue for a person to move live wild-caught shad or herring from Lake Cumberland to the downstream Cumberland River (i.e. the tailwaters)?
- (b) Response: The issue here is one of reasonable enforceability and similarity of appearance. Most people cannot distinguish young Asian carp from young shad or herring. The regulation already prohibits the transportation and possession of live wild-caught shad or herring. If the Department were to allow the transportation of live wild-caught shad or herring from Lake Cumberland to the Cumberland River tailwater, it would be very difficult for an officer to prove where the fish came from or their final destination. The regulation is far more enforceable by prohibiting such activity.

(4) Subject Matter: Live wells in boats.

Commenter: Jim Durham

- (a) Comment: It is the commenter's impression that the regulation prohibits any live baitfishes from being brought into Lake Cumberland and that all live wells must be empty at the ramp.
- (b) Response: This not true. Only live wild-caught shad or herring **and** prohibited aquatic species as established in 301 KAR 1:122 are prohibited from being possessed or used as live bait.

(5) Subject Matter: Use of live shiners and suckers as bait.

Commenter: Jim Durham

- (a) Comment: Will live shiners and suckers also be banned from possession or transport?
- (b) Response: No. The regulation does not prohibit the use of live shiners or suckers as baitfish.

**Summary of Statement of Consideration and Action
Taken by Promulgating Administrative Body**

The public hearing on this administrative regulation was cancelled; however, written comments were received. The Kentucky Department of Fish and Wildlife Resources responded to the written comments above and will also be amending 301 KAR 1:130.

All amendments are listed below:

Page 1
Section 1(1)
Line 7

After "Definitions. (1)", insert the following:

"Different body of water" means a body of water that is separate and not contiguous to another body of water, including a man-made reservoir that is separated from a downstream river by a dam, but does not include a river, stream, or creek that is separated by a low-level dam.

(2)

Page 1
Section 1(1) and (2)
Lines 16, 17 and 18

After "organisms except mussels.", insert "(3)".

Delete "(2)".

Note to Compiler: Renumber remaining subsection accordingly.

Page 5
Section 4(1)
Lines 3 and 4

After "Personal Use. (1)", insert "A person possessing".

Lowercase "Live".

Page 5
Section 4(1)(a)
Line 5

After "(a) Only", insert the following:

use live wild-caught shad or herring

Delete "be used"

After "in the water body", insert "from which".

Delete "where"

Page 5
Section 4(1)(b)
Lines 5 and 6

After “collected; and (b) Not”, insert the following:

transport live wild-caught shad or herring from the body in which they were collected to:

1. A different body of water; or

2. The same body of water if it involves transporting the shad or herring via a Kentucky roadway.

Delete the following:

be transported to or used in a different body of water

Page 5
Section 4(2)
Line 7

After “(2)”, insert the following:

A person may possess or transport live shad or herring if the person legally purchased the shad or herring from a licensed bait dealer and possesses a valid receipt of the purchase that includes the:

(a) Species of fish;

(b) Quantity of fish;

(c) Amount of the transaction; and

(d) Date of purchase.

(3)